STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE CONTEMPT OF KELLY MICHELLE DORSEY,

PEOPLE OF THE STATE OF MICHIGAN
Petitioner-Appellee,

v

TYLER MICHAEL DORSEY,
Respondent,

and

KELLY MICHELLE DORSEY,
Appellant
_____/

Supreme Court: 150298
Court of Appeals: 309269
44th Cir. Ct. Livingston County
Family Division: 08-12596-DL

SECOND SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANT, KELLY MICHELLE DORSEY

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Appellant's answer: "Yes."
Appellee's answer: "No.'
The Trial Court Ruled: "No."
The Court of Appeals Ruled: "No."

II. WHETHER MICHIGAN RECOGNIZES ANY OTHER EXCEPTIONS TO APPLICATION OF THE COLLATERAL BAR RULE, INCLUDING (A) LACK OF OPPORTUNITY FOR MEANINGFUL APPELLATE REVIEW OF THE JANUARY 14, 2011 DRUG TESTING ORDER; OR (B) THE APPELLANT'S IRRETRIEVABLE SURRENDER OF CONSTITUTIONAL GUARANTEES CONSTITUTIONAL GUARANTEES BY COMPLYING WITH THE DRUG TESTING ORDER, SEE *MANESS V MEYERS*, 419 US 449; 95 S CT 584; 42 L ED 2D 574 (1975)?

Appellant's answer: "Yes."
Appellee's answer: "No.'
The Trial Court Ruled: "No, by implication."
The Court of Appeals Ruled: "No, by implication."

III. WHETHER MS. DORSEY HAS PROPERLY PRESERVED ISSUE NUMBER TWO ABOVE FOR APPELLATE REVIEW CONCERNING THE LACK OF OPPORTUNITY FOR MEANINGFUL APPELLATE REVIEW THROUGH DIRECT APPEAL OF THE JANUARY 14, 2011 DRUG TESTING ORDER AND THE IRRETRIEVABLE SURRENDER OF CONSTITUTIONAL RIGHTS?

Appellant's answer: "Yes."
Appellee's answer: Unknown and waived by Appellee.

INTRODUCTION

On October 21, 2014, Kelly Michelle Dorsey filed an application for leave to the appeal the Court of Appeal's written opinion, rendered September 9, 2014, finding that the underlying drug testing order in this case was unconstitutional, but, nevertheless, affirming her criminal contempt convictions. *In re Contempt of Dorsey*, 306 Mich App 571; 858 NW2d 84 (2014). In its September 30, 2015 order granting oral argument on the Application for Leave to Appeal, under MCR 7.305(H)(1), the Court ordered the parties to submit supplemental briefs on whether the general rule set forth in the case of *In re Hatcher*, 443 Mich 426; 438; 505 NW2d 834 (1993), which bars collateral attacks in appeals from parental rights termination orders on the initial exercise of the family court's jurisdiction, operates to bar Ms. Dorsey's challenge to the January 14, 2011 drug testing order in the context of an appeal from her criminal contempt conviction. *In re Contempt of Dorsey*, 498 Mich 891 (2015).

Ms. Dorsey filed her first supplemental brief in support of her Application for Leave to Appeal on November 12, 2015, arguing that *Hatcher* is distinguishable and, thus, not applicable to this case. The State also filed a supplemental brief on November 10, 2015.

On December 23, 2015, this Court vacated its September 30, 2015 order and held the Application for Leave to Appeal in abeyance pending the Court's decision on *In re Jones*, 498 Mich 956 (2015). *In re Contempt of Dorsey*, 872 NW2d 489 (Mich 2015). On February 17, 2016, the Court vacated its order granting leave to appeal for *In re Jones*, vacated the judgment of the Court of Appeals in that case, and remanded it to the trial court. *In re Jones*, 499 Mich 862 (2016).

On June 1, 2016, this Court ordered oral argument on the application for leave to appeal and directed the parties to file supplemental briefs addressing:

> (1) whether the family court lacked subject matter jurisdiction to issue the order compelling the appellant to submit to random drug testing as part of her son's juvenile delinquency proceeding, see MCL 712A.6; *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 544-545 (1935); (2) whether Michigan recognizes any other exceptions to application of the collateral bar rule, including (a) lack of opportunity for meaningful appellate review of the January 14, 2011 drug testing order; or (b) the appellant's irretrievable surrender of constitutional guarantees by complying with the drug testing order, see *Maness v Meyers*, 419 US 449; 95 S Ct 584; 42 L Ed 2d 574 (1975); and (3) whether the appellant has properly preserved question (2) for appellate review.

In re Contempt of Dorsey, 879 NW2d 263 (Mich 2016).

SUMMARY OF ARGUMENT

In response to this direction from the Court, Ms. Dorsey argues, first, that the trial court lacked subject matter jurisdiction to issue the January 14, 2011 drug testing order against Ms. Dorsey because the statutory language in MCL 712A.6 and MCL 712A.18(1)(b) conflict in their interaction with each other. When construed *in pari materia,* in a manner that does not render these statutes unconstitutional, MCL 712A.6 and MCL 712A.18(1)(b) limit the Legislature's grant of jurisdiction to the family court over adults in juvenile delinquency cases to the issuance of reasonable orders. Although the word "order" generally indicates the exercise of jurisdiction, due to the way the statutes are phrased and the failure of MCL 712A.2 to permit the invocation of subject matter jurisdiction over adults in juvenile delinquency cases, MCL 712A.6 and MCL 712A.18(1)(b) are jurisdictional in nature and convey limited subject matter jurisdiction.

Second, it is Ms. Dorsey's position that binding authority from the United States Supreme Court and other courts requires Michigan to adopt the lack of meaningful opportunity for appellate review and irretrievable surrender of constitutional rights

exceptions to the collateral bar rule. These two exceptions apply to the facts of this case permitting Ms. Dorsey to collaterally challenge the underlying drug testing order in her appeal from her contempt convictions. The January 14, 2011 drug testing order required Ms. Dorsey to irretrievably surrender, in this instance, her Fourth Amendment right to be free from unreasonable searches and seizures. Ms. Dorsey was indigent and lacked the resources to obtain counsel and prepare the transcript for a direct appeal and, in any event, there would not have been an appeal by right, but only by leave. Thus, Ms. Dorsey lacked a meaningful opportunity for appellate review of the underlying January 14, 2011 drug testing order. As the Court of Appeals has already found the underlying drug testing order unconstitutional in this case, and because exceptions to the collateral bar rule render it inapplicable, Ms. Dorsey is entitled to have the contempt orders issued against her vacated.

Third, the exceptions to the collateral bar rule regarding the lack of meaningful opportunity for appellate review and the irretrievable surrender of constitutional rights were preserved for appeal in that they merely represent an improvement on the arguments advanced below on the exceptions to the collateral bar rule, alongside the Fourth Amendment claim, and are issues of pure law. The facts necessary to resolve these pure questions of law were presented to the trial court and the Court of Appeals in the argumentation on the subject matter jurisdiction, the Fourth Amendment, and sufficiency of the evidence claims. Furthermore, the State waived its ability to assert the preservation of issues for appeal on these two exceptions as it did not address the issue in its answer to the Application for Leave to Appeal or in its First Supplemental Brief. Alternatively, if the Court finds that these two exceptions to the collateral bar rule were

not preserved for appeal, the Court should apply the plain error rule and review them on that basis.

STATEMENT OF FACTS

The application for leave to appeal filed on October 21, 2014, contains a thorough summary of the relevant facts. It would be duplicative to restate them here.

ARGUMENT

I. THE FAMILY COURT LACKED JURISDICTION TO ISSUE THE JANUARY 14, 2011 ORDER REQUIRING MS. DORSEY TO SUBMIT DRUG TESTING BY HER SON'S PROBATION OFFICER.

The argument that the trial court lacked subject matter jurisdiction to issue the January 14, 2011 drug testing order was discussed in pages 14-23 of the Application for Leave to Appeal, pages 1-4 of the Reply Brief in support of the Application for Leave to Appeal, and pages 16-20 of Ms. Dorsey's First Supplemental Brief.

As noted in the previous briefs, the family court is a court of limited jurisdiction. See Const 1963, art 6, § 15; MCL 600.1021(1)(e); MCL 712A.2(a); *In re Kasuba Estate*, 401 Mich 560, 566; 258 NW2d 731 (1977). It has no inherent jurisdiction and is limited to the jurisdiction granted to it in the state constitution and the statutes enacted by the Legislature. See *Kasuba Estate*, 401 Mich at 566. A court lacks subject matter jurisdiction if the conditions in the jurisdictional statute are not satisfied. See *Stamadianos v Stamadianos*, 425 Mich 1, 5-14; 385 NW2d 604 (1986).

MCL 712A.2(a) grants exclusive original jurisdiction to the family court "in proceedings concerning a juvenile under 17 years of age who is found within the county" provided that one or more of the enumerated contingencies in MCL 712A.2(a)(1) are applicable, including, among other things, that "the juvenile has violated any municipal

ordinance or law of the state or of the United States." This statute does two things. First, it grants the family court exclusive personal jurisdiction, contingent on proper notice, over juveniles under age 17 found in the county. See *People v Kiyoshk*, 493 Mich 923, 923; 825 NW2d 56 (2013) (citing *People v Veling*, 443 Mich 23, 31-32; 504 NW2d 456 (1993)). Second, it grants subject matter jurisdiction to the family court over misdemeanor and felony violations of municipal, state, and federal law. See *id*. (citing *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011)). This subject matter jurisdiction over violations of state law is not exclusive as the circuit court also has subject matter jurisdiction for violations of the state law and may exercise that jurisdiction over juveniles when either the juvenile or the family court waives personal jurisdiction. See *id*. at 923-24 (citing *Lown*, 488 Mich at 268 and *Veling*, 443 Mich at 31-32).

In this case, the underlying delinquency proceedings against Tyler Dorsey were for his violations of state law and did not concern any violations of state law by Ms. Dorsey or any other adults. See MCL 712A.2(a). If the exclusive personal jurisdiction of the family court had been waived and the case moved to circuit court, then there would have been personal jurisdiction over Ms. Dorsey, if she was given proper notice, but the circuit court's subject matter jurisdiction would not have been invoked in regards to Ms. Dorsey because she was not charged with a crime. MCL 712A.2(a); *Kiyoshk*, 493 Mich at 923-24 (citing *Lown*, 488 Mich at 268). Indeed, there is no basis for either personal or subject matter jurisdiction over the parent of an adult child charged with a crime in circuit court. Cf. *Kiyoshk*, 493 Mich at 923-24.

The family court lacks subject matter jurisdiction when it has not been invoked as to a particular party because the party was not named as a defendant or respondent in

the petition. Cf. *Hatcher*, 443 Mich at 437; *Elec Data Sys Corp v Twp of Flint*, 253 Mich App 538, 542-43, 548; 656 NW2d 215 (2002) ("The untimely petition meant that the jurisdiction of the Tax Tribunal was never invoked and, as previously stated, subject matter jurisdiction can never be conferred by the parties, nor can defects in subject matter jurisdiction be waived."); see also *Fla Power & Light Co v Canal Auth of State of Fla*, 423 So 2d 421, 423 n 8 (Fla. 5th DCA 1982) ("Such subject matter jurisdiction must be properly *invoked* and *perfected*."). When the delinquency petition was filed, the subject matter jurisdiction of the family court was invoked as to Tyler Dorsey but not as to his mother, Ms. Dorsey. The subject matter jurisdiction to issue orders under MCL 712A.6 and MCL 712A.18 was not invoked as to Ms. Dorsey until the drug testing order was entered. It was invoked after the Tyler was adjudicated for the 2009 delinquency petition, but two weeks before Tyler was adjudicated on the 2010 delinquency petition. (Supp. Order of Disp., Jan. 14, 2011; Petition 2009-0801259602; Petition 2010-081259604; Register of Actions).

Given that the January 14, 2011 drug testing order was issued under the 2009 delinquency petition, but the two show cause orders issued to Ms. Dorsey on January 10, 2012, cited the 2010 delinquency petition, subject matter jurisdiction clearly had not been invoked as to Ms. Dorsey until the drug testing order was issued. (Mot. and Order to Show Cause [Kelly Dorsey], Jan. 10, 2012). Thus, MCL 712A.2(a) granted the family court neither personal jurisdiction nor subject matter jurisdiction over adults. Cf. *Kiyoshk*, 493 Mich at 923-24. This is where conclusion of the trial court that the family court obtains jurisdiction over the adult when it is obtains jurisdiction over the child breaks down. (Mot. Hr'g Tr. 20:22-24). Consequently, standing by itself, MCL 712A.2(a) is insufficient to

provide the family court subject matter or personal jurisdiction over an adult like Ms. Dorsey as she was not charged with the crime from which the juvenile court derived its subject matter jurisdiction over the juvenile.

As such, the family court is entirely reliant on MCL 712A.6 and MCL 712A.18 for personal and subject matter jurisdiction over adults. MCL 712A.6 states that the family court "has jurisdiction over adults as provided in this chapter . . . and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles." MCL 712A.18(1)(b) permits the family court to place the juvenile on probation and "order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile."

These statutes are unusual in that instead of granting subject matter jurisdiction by setting the kind, character, or classes of cases or claims that a court may hear, see *Travelers Ins Co v. Detroit Edison Co*, 465 Mich 185, 204; 631 NW2d 733 (2001), MCL 712A.6 and MCL 712A.18(1)(b) grant it by the kind, character, or classes of orders that the family court may render affecting adults. Orders are usually the manifestation of the exercise of a court's jurisdiction rather than subject matter jurisdiction itself. See *Hatcher*, 443 Mich at 438-39 (quoting *Fredrick*, 271 Mich at 545-46). This Court wrote about the distinction between the erroneous exercise of jurisdiction and the lack of jurisdiction in *Fredrick*:

> Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once

> attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.

271 Mich at 545-46 (quoting 33 C.J. pp. 1078-79).

Fredrick and *Hatcher* are distinguishable from this case. *Hatcher* is distinguishable as discussed in pages 6-20 of Ms. Dorsey's First Supplemental Brief and for the reason that it was an abuse and neglect case where the parent was named as a respondent in the petition. See *Hatcher*, 443 Mich at 428-29. *Fredrick* involved a probate proceeding in circuit court where the plaintiffs collaterally attacked a divorce judgment that the defendant had obtained in a separate proceeding on the grounds that a statute prohibited the taking of testimony or proofs in divorce proceedings until two months after the filing of the complaint. 271 Mich at 542-43. The final divorce decree had been rendered as a default judgment two days before the two month period had expired. *Id*. at 543. The plaintiffs argued this meant that the divorce decree was void because the circuit court had "no jurisdiction to grant a decree for divorce." *Id*. This Court held that the circuit court acquired personal jurisdiction over the parties, who both resided in Michigan, and subject matter jurisdiction after the complaint was filed and served. *Id*. at 546. The difference between *Fredrick* and the instant case is that (1) *Fredrick* involved a court of general jurisdiction, the circuit court, as opposed to a court of limited jurisdiction, and (2) unlike how subject matter and personal jurisdiction attached upon the filing and service of the

complaint in *Fredrick*, personal and subject matter jurisdiction did not attach and were not invoked as to Ms. Dorsey through the filing of the delinquency petition and the invocation of the family court's delinquency jurisdiction in regards to her son under MCL 712A.2. Cf. *Kiyoshk*, 493 Mich at 923-24. In fact, the statute recognizes that personal jurisdiction over the parent is not acquired at the time the petition is filed against the juvenile. MCL 712A.18(4), which states that "[a]n order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by issuance of summons or notice as provided in sections 12 and 13 of this chapter and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of this chapter." This statute envisions a separate invocation of jurisdiction and service of process from that which occurred when the delinquency petition was filed against the juvenile, and the focus is on orders rather than pleadings that initiate cases.

Thus, this is an unusual situation where the statutes, upon which jurisdiction over adults in juvenile delinquency cases rests, do not conform to the norms of the jurisprudence on subject matter jurisdiction. This court has found that MCL 712A.6 authorized two kinds of orders affecting adults. See *In re Macomber*, 436 Mich 386, 390-91; 461 NW2d 671 (1990). The first kind are those orders specifically authorized by the other statutes in chapter 712A (juveniles) and chapter 10A (drug courts). *Id*. This includes orders under MCL 712A.18(1)(b), which requires that the orders directed towards adults be part of the juvenile's probation and that the orders must be reasonable rules of conduct that are necessary for the physical, mental, or moral well-being of the juvenile. See *id*. at 391-93. The second type of order arises from MCL 712A.6, which

permits orders concerning adults provided that the family court (1) has acquired jurisdiction over the child, (2) is acting to ensure the child's well-being, (3) that the order is incidental to the family court's jurisdiction over the child, and (4) that the order is necessary for the child's interest. See *Macomber*, 436 Mich at 398-99; *In re Harper*, 302 Mich App 349, 356-57; 839 NW2d 44 (2013) (noting that *Macomber* cautioned family courts to be conservative in issuing orders affecting adults in juvenile cases). As noted above, the orders referenced in MCL 712A.6 and MCL 712A.18 may only be issued if certain conditions are met. These statutes do not merely permit the exercise of subject matter and personal jurisdiction over adults, but specify the kind, character, and class of the order that the family court has subject matter jurisdiction to issue to adults. See *Macomber*, 436 Mich at 391, 398-99. MCL 712A.18(4) governs the invocation of that subject matter jurisdiction and the acquisition of personal jurisdiction through service of process of the order in the manner usually reserved for pleadings initiating a case.

MCL 712A.6 and MCL 712A.18(1)(b) are ambiguous and require statutory interpretation because they interact in such a way as to conflict with each other. See *Macomber*, 436 Mich at 391, 398-99; see also *People v Hall*, ___ Mich ___; ___ NW2d ___ (Docket No 150677) ("A statute is ambiguous if two provisions irreconcilably conflict or if the text is equally susceptible to more than one meaning. If two provisions can instead be construed to avoid conflict, that construction should control." (citing *Lansing Mayor v Pub Serv Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004) and *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998))). This Court recognized ambiguity arising from the interaction between MCL 712A.6 and MCL 712A.18(1)(b) when it engaged in statutory of interpretation of these statutes in *Macomber*. 436 Mich at 391-92. Indeed,

members of this Court disagreed as to the proper interpretation of these statutes. *Id*. 389-412.

Ultimately, the Court found that MCL 712A.6 and MCL 712A.18(1)(b) must be construed consistently with each other, *in pari materia*,[1] because they were adopted by the Legislature at the same time. *Id*. at 391-92. MCL 712A.18(1)(b) limits orders concerning rules of conduct for adults to reasonable orders. The trial court in this case was imposing terms of the juvenile's probation when it issued the January 14, 2011 drug testing order and thus it was using the authority of MCL 712A.18(1)(b). In any event, the reasonableness requirement in MCL 712A.18(1)(b) must be imported into MCL 712A.6 in order for the statutes to be construed consistently with each other and for both statutes to be interpreted in a manner that does not render them unconstitutional. See *Macomber*, 436 Mich at 391-92.

Although the Court ruled in *Macomber* that MCL 712A.6 was not limited to orders enumerated in MCL 712A.18 and other parts of Chapter 712A, this Court has recognized that statutes must be construed in such a manner that they remain constitutional if possible. See *Dep't of Human Servs v Laird (In re Sanders)*, 495 Mich 394, 404; 852 NW2d 524 (2014); *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 6; 658 NW2d 127 (2003). This Court stated in *Sanders*[2] that it would not interpret MCL 712A.6 in a manner

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[1] "Under the doctrine [of in pari materia], statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." *People v Feeley*, ___ Mich ___; ___ NW2d ___ (2016) (Docket No 152534) (quoting *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015)).

[2] This Court's holding in Sanders weighs in favor of finding a lack of subject matter jurisdiction over the Ms. Dorsey in this case. This Court held in *Sanders* that the one child doctrine permitting the termination of the parental rights of both parents after

that renders it unconstitutional. See *Sanders*, 495 Mich at 404, 412-13 ("Because we have a duty to interpret statutes and court rules as being constitutional whenever possible, we reject any interpretation of MCL 712A.6 and MCR 3.973(A) that fails to recognize the unique constitutional protections that must be afforded to unadjudicated parents, irrespective of the fact that they meet the definition of 'any adult'"). Indeed, MCL 712A.18(4) indicates an intention on the part of the Legislature that Chapter 712A be interpreted in a manner that does not render it unconstitutional by requiring notice to the parent before an order becomes binding.

Without importing the reasonableness limitation into MCL 712A.6, the statute would permit the issuance of unreasonable orders. Unreasonable orders regarding searches and seizures violate article I, section 11 of the Michigan Constitution and the Fourth Amendment to the United States Constitution. Const 1963, art I, § 11; U.S. Const Amend IV; *In re Contempt of Dorsey*, 306 Mich App at 584 (quoting *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009)). Thus, permitting the issuance of unreasonable orders under MCL 712A.6 would render the statute unconstitutional. See *Sanders*, 495 Mich at 412-13 (citing *Taylor*, 468 Mich at 6); *Moreno v. State*, 203 P3d 1000, 1008 (Utah, 2009). As occurred in *Sanders*, this case involves an adult who was not adjudicated by the juvenile delinquency petition, but here it is because she was not and could not be charged with violating a law of the state in the juvenile delinquency petition. See *Sanders*, 495 Mich at 412-13. In *Sanders* the constitutional violation was the termination of parental rights without due process. *Id*. Here, it is the subjection of

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only one of them was adjudicated unfit violated the due process requirements of the Fourteenth Amendment. *Id*. at 422-23.

Ms. Dorsey to an unconstitutional search and seizure through an unreasonable order. *In re Contempt of Dorsey*, 306 Mich App at 589.

Ms. Dorsey's lack of legal representation when the underlying order was issued also raises subject matter jurisdiction issues. This Court has permitted collateral attacks on juvenile adjudications procured in violation of *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963) in challenges to their use for sentencing enhancement purposes and has considered a violation of *Gideon* to be a jurisdictional defect. *People v Carpentier*, 446 Mich 19, 29-30; 521 NW2d 195 (1994) (citing *Custis v United States*, 511 US 485, 493-96; 114 S Ct 1372; 128 L Ed 2d 517 (1994)). "If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty . . . . The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by *habeas corpus*." *Johnson v Zerbst*, 304 US 458, 468; 58 S Ct 1019; 82 L Ed 1461 (1938).

When MCL 712A.6 and MCL 712A.18, the relevant jurisdictional statutes, are read together, in a constitutional manner, to limit the authority of the family court to issue only reasonable orders directed at adults, the family court lacks subject matter jurisdiction to issue unreasonable orders violating the constitutional rights of a party who was never adjudicated by the family court. See *Sanders*, 495 Mich at 412-13 (citing *Taylor*, 468 Mich at 6); *Moreno v. State*, 203 P3d 1000, 1008 (Utah, 2009). Consequently, the drug testing order in this case did not fall within the range of the family court's subject matter jurisdiction regarding adults in juvenile delinquency cases. See MCL 712A.6,

712A.18(1)(b); *Moreno*, 203 P3d at 1012; *Macomber*, 436 Mich at 391-92. Even if the Court were to find that the family court had subject matter jurisdiction to issue the order, the imprisonment and fines imposed on Ms. Dorsey must be vacated, because the remainder of any jail sentence and fines that were stayed pending appeal cannot be imposed for contempt when the underlying order was erroneous. *Rose v Aaron*, 345 Mich 613, 615; 76 NW2d 829 (1956); *Lester v Sheriff of Oakland Cty*, 84 Mich App 689, 698; 270 NW2d 493 (1978) (citing *Rose*, 345 Mich at 615).

II. MICHIGAN SHOULD RECOGNIZE EXCEPTIONS TO THE COLLATERAL BAR RULE WHEN THE UNDERLYING ORDER REQUIRED AN IRRETRIEVABLE SURRENDER OF A CONSTITUTIONAL GUARANTEE OR WHEN THERE WAS NO MEANINGFUL OPPORTUNITY FOR APPELLATE REVIEW.

Michigan should recognize exceptions to the collateral bar rule where (1) there was no meaningful opportunity for appellate review and (2) the order at issue requires the irretrievable surrender of constitutional rights, because that outcome is compelled by the binding precedent of the United States Supreme Court in *Maness v Meyers*, 419 US at 460-61. This issue was addressed on pages 38-42 of the Application for Leave to Appeal, on pages 4-5 of the Reply Brief in Support of the Application for Leave to Appeal, and on pages 12-16 of the First Supplemental Brief.

A. MS. DORSEY HAD NO MEANINGFUL OPPORTUNITY FOR APPELLATE REVIEW.

The collateral bar rule presumes that the respondent in a contempt proceeding had a meaningful opportunity for appellate review of the underlying order. See *Walker v City of Birmingham*, 388 US 307, 318-19; 87 S Ct 1824; 18 L Ed 2d 1210 (1967); *State*

Bar of Michigan v Cramer, 399 Mich 116, 125; 249 NW2d 1 (1976). The holding in *Walker* applying the collateral bar rule "was based upon the availability of review of those claims at an earlier stage." *United States v Ryan*, 402 US 530, 532 n 4; 91 S Ct 1580; 29 L Ed 85 (1971). In *Walker*, which involved a state court proceeding, the United States Supreme Court stated that collateral bar rule does not apply when there is no meaningful opportunity for appellate review. 388 US at 318-19; see also *In re Novak*, 932 F2d 1397, 1401-02 (CA 11, 1991); *United States v Dickinson*, 465 F2d 496, 511 (CA 5, 1972); Dobbs, *The Law of Remedies* (2d ed Abr) pp 154-55. The Supreme Court has held that when there is no immediate right of appeal available, such as when the underlying order was a non-final order, the party held in contempt can challenge the underlying order in an appeal from the contempt order. *Maness*, 419 US at 460; *Ryan*, 402 US at 532-33. "[A] challenge to the merits of [an] underlying order may be made in any appeal from an order of contempt where, for constitutional, statutory, or practical reasons, no other remedy, either by appeal or mandamus, was available." *State v Crenshaw*, 307 Or 160, 168; 764 P2d 1372, 1377 (1988) (en banc).

In this case, Ms. Dorsey had no opportunity for meaningful appellate review of the January 14, 2011 drug testing order. First, the drug testing order was not appealable by right as it was issued after Tyler was adjudicated delinquent as to the 2009 delinquency petition, and the order did not remove Tyler from the home as that was done in a previous order in August 2010. See MCR 3.993(A). While Ms. Dorsey could have sought leave to appeal the order under MCR 3.993(B), she was not represented by counsel in this matter at the time, she did not have the financial resources to hire an attorney or procure the transcript, and she did not have the knowledge and training necessary to file for leave

to appeal. As the Court of Appeals acknowledged, the Fourth Amendment issue was an issue of first impression in Michigan. *In re Contempt of Dorsey*, 306 Mich App at 585. Ms. Dorsey was not entitled to court appointed counsel as the mother of a juvenile in a delinquency proceeding because in January 2011 there was no contempt proceeding pending against her. See *Mead v Batchlor*, 435 Mich 480, 505; 460 NW2d 493 (1990); *People v McCartney*, 132 Mich 547, 552; 348 NW2d 692 (1984) (citing *Jaikens v Jaikens*, 12 Mich App 115, 120; 162 NW2d 325 (1968)).

For the practical reason that Ms. Dorsey did not have access to counsel and did not have funds to prepare the transcript, Ms. Dorsey had no meaningful opportunity to seek appellate review of the January 14, 2011 drug testing order. See *Crenshaw*, 307 Or at 168. Furthermore, there was no guarantee Ms. Dorsey would have been granted leave to appeal. See MCR 3.993(B). Therefore, as in *Ryan*, where the availability of an appeal was conditioned on waiting until a final judgment was rendered, Ms. Dorsey had merely the opportunity to apply for leave to appeal without any certainty it would be granted or that the resolution would not come too late. See *Ryan*, 402 US at 532-33; *Crenshaw*, 307 Or at 167-68.

Secondly, the January 14, 2011 drug testing order only put Ms. Dorsey on notice that she would be required to submit to random drug tests at the request of her son's probation officer. (Supp. Order of Disp., Jan. 14, 2011). It was not until nearly a year later, after the applicable appellate filing deadline had passed, that this random drug testing changed into a systematic regime requiring twice weekly drug tests for a 90 day period. (Show Cause Hr'g Tr. 25:1-3; ALA Ex. 6). Ms. Dorsey was unaware in January 2011 that the drug testing order would, a year later, require something materially different

and more intrusive than random drug testing. Furthermore, when the drug testing requests were made on January 9 and January 10, 2012, Ms. Dorsey was not given a reasonable time to obtain and consult with counsel about the requests as the show cause motions for contempt of court were filed the morning after the January 9, 2012 drug testing request. (Show Cause Hr'g Tr. 15:13-16, 19:11-13, 23:11-14, 23:18-23).

Third, the show cause orders in this case were filed under the 2010 juvenile delinquency petition, but the January 14, 2011 drug testing order was issued under the 2009 juvenile delinquency petition. The 2009 delinquency petition had been adjudicated at that point as to Tyler, but the 2010 juvenile delinquency petition was not adjudicated as to Tyler until two weeks after the drug testing order was issued in the 2009 delinquency petition. Dispositional orders that are issued before the adjudication of the party the order is directed at are subject to collateral attack. *In re Wangler*, 498 Mich 911, 911; 870 NW2d 923 (2015); *In re Kanjia*, 308 Mich App 660, 669-70; 866 NW2d 862 (2014) (citing *Sanders*, 495 Mich at 419, 422). In this case, not only was Tyler not adjudicated on the 2010 delinquency petition, but Ms. Dorsey was never adjudicated as to any delinquency petition as she was never charged with, and could not be charged with, any crime in the family court. See *Wangler*, 498 Mich at 911; *Sanders*, 495 Mich at 422-23.

Under these circumstances, Michigan should recognize the exception to the collateral bar rule for lack of meaningful opportunity for appellate review. See *Maness*, 419 US at 460; *Ryan*, 402 US at 532-33; *Walker*, 388 US at 318-19; *In re Novak*, 932 F2d at 1401-02; *Dickinson*, 465 F2d at 511; *Crenshaw*, 307 Or at 168. Ms. Dorsey did not have a meaningful opportunity for appellate review of the underlying drug testing order because the court rule provides only for an appeal by leave and not by right, she was

indigent lacking funds to hire an attorney or prepare the transcript, the drug testing request made to Ms. Dorsey by her son's probation officer was materially different in the scope of its intrusion than the random drug testing required in the underlying order, and the show cause orders for contempt in this case cited the 2010 delinquency petition that had not yet been adjudicated when the drug testing order was issued under the 2009 delinquency petition, which had been previously adjudicated at to Tyler.

A. THE UNDERLYING DRUG TESTING ORDER REQUIRED THE IRRETRIEVABLE SURRENDER OF A CONSTITUTIONAL RIGHT.

The United States Supreme Court has permitted a process of pre-compliance review where the underlying order can be challenged in an appeal from a contempt conviction if complying with the underlying order would result in the irretrievable surrender of constitutional rights or where there was no meaningful opportunity for appellate review. *See Maness*, 419 US at 460; *Ryan*, 402 US at 532-33; accord *Dauphine v Carencro High Sch*, 843 So 2d 1096, 1107 (La 2003) (citing *City of Lake Charles v Bell*, 347 So 2d 494 (La 1977)). In *Ryan*, the Supreme Court held that for federal civil cases immediate compliance was not only option available to a party:

> But compliance is not the only course open to respondent. If, as he claims, the subpoena is unduly burdensome or otherwise unlawful, he may refuse to comply and litigate those questions in the event that contempt or similar proceedings are brought against him. Should his contentions be rejected at that time by the trial court, they will then be ripe for appellate review.

402 US at 532 (citing *Walker*, 388 US at 307). In *Maness*, the Supreme Court extended this procedure to state civil cases where the Fifth Amendment privilege against self-incrimination is at issue, noting that "[c]ompliance could cause irreparable injury because

appellate courts cannot always 'unring the bell' once the information has been released." 419 US at 460. This procedure is not without risk as a party opting to be held in contempt and then appeal the contempt conviction risks the possibility that underlying order will be affirmed on appeal leaving the party with an adjudication of contempt on their record. *Id*. (citing *Ryan*, 402 US at 523-33). The applicability of *Maness* is not limited solely to the Fifth Amendment context. See *Behrens v Pelletier*, 516 US 299, 318-19; 116 S Ct 834; 133 L Ed 2d 773 (1996) (noting that in order to obtain appellate review of an adverse discovery order before final judgment the party must disobey the order and appeal the resulting contempt conviction (citing *Church of Scientology of Cal v United States*, 506 US 9, 18 n 11; 113 S Ct 447; 121 L Ed 2d 313 (1992) and *Maness*, 419 US at 460-61)).

Michigan should follow the binding precedent in *Maness* for state civil cases. Delinquency cases are considered quasi-criminal, but are still civil in nature. MCL 712A.1(2); *In re Contempt of Dorsey*, 306 Mich App at 589. This rule permitting collateral challenges to underlying orders in appeals from contempt convictions will not result in an epidemic of disobedience as the far easier route for a person subject to a court order is to simply obey the order rather than to endure years of ongoing litigation and face the possibility that the underlying order and the contempt conviction might be affirmed on appeal. Furthermore, Michigan has already adopted a doctrine that prevents the imposition of the remainder of a punishment for contempt when the underlying order was erroneous. See *Rose*, 345 Mich at 615.

The irretrievable surrender of constitutional rights exception to the collateral bar rule applies in Ms. Dorsey's case. The Court of Appeals found that underlying January 14, 2011 drug testing order was unconstitutional as a violation of the Fourth Amendment.

In re Contempt of Dorsey, 306 Mich App at 589. As the subpoena seeking to obtain magazines constituted a deprivation of the Fifth Amendment right against self-incrimination in *Maness*, so too did the drug testing order in this case when it compelled Ms. Dorsey to irretrievably relinquish her Fourth Amendment right to be free from unreasonable searches and seizures. See *Maness*, 419 US at 460-66.

The State has suggested that the right was not irretrievable and that Ms. Dorsey's only remedy should have been to file a motion to suppress any incriminating drug test results if a criminal case was subsequently brought against her. The United States Supreme Court has repeatedly rejected this suggestion and held that a motion to suppress in a subsequent criminal case "would [not] afford adequate protection. Without something more, [the witness] would be compelled to surrender the very protection which the privilege is designed to guarantee." *United States v Balsys*, 524 US 666, 683 n.8; 118 S Ct 2218; 141 L Ed 2d 575 (1998) (quoting *Maness*, 419 US at 462). Merely suppressing evidence does nothing to undo the subjection of Ms. Dorsey to an unreasonable and unconstitutional search. An appellate court cannot "unring the bell" after the search takes place and change the past so that the search no longer took place. See *Maness*, 402 U.S. at 532-33. The Fourth Amendment protects against unreasonable searches and seizures. While the exclusionary rule is a tool for enforcing constitutional rights and deterring future violations, it cannot undo the fact that an unreasonable search took place. The State's reliance on the Sixth Circuit's holding in *United States v. Hendrickson*, ___ F.3d ___; 2016 WL 930134, at *2-3 (CA 6, Mar. 11, 2016) is misplaced because Hendrickson pursued a direct appeal of the underlying order to the Sixth Circuit and then petitioned for certiorari from the Supreme Court. *Id*. After her appeal of the

underlying order was rejected, Hendrickson continued to defy the trial court's order. *Id*. *Maness* did not involve or condone that kind of conduct. In Ms. Dorsey's case, like *Maness*, there was no direct appeal and her constitutional claims are being presented to the appellate courts for the first time on the appeal from her contempt conviction. See *Maness*, 419 US at 451-57.

III. THE ISSUES REGARDING THE EXCEPTIONS TO THE COLLATERAL BAR RULE FOR LACK OF AN OPPORTUNITY FOR APPELLATE REVIEW AND THE IRRETRIEVABLE SURRENDER OF CONSTITUTIONAL RIGHTS WERE PRESERVED FOR APPELLATE REVIEW.

The issues regarding the exceptions to the collateral bar rule for the lack of meaningful opportunity for appellate review and the irretrievable surrender of constitutional rights were preserved for appeal. These issues are tied to the underlying Fourth Amendment claim.

A. THE UNDERLYING FOURTH AMENDMENT CLAIM, AND THE FACTS SUPPORTING IT, WAS RAISED IN THE LOWER COURTS AND THE ADDITIONAL EXCEPTIONS TO THE COLLATERAL BAR RULE ARE PURELY ISSUES OF LAW IMPROVING THE EXISTING ARGUMENT.

Although the lack of meaningful opportunity for appellate review and irretrievable surrender of constitutional rights exceptions to the collateral bar rule were not raised below, this is not determinative as another exception to the collateral bar rule was raised for lack of subject matter jurisdiction along with the underlying Fourth Amendment constitutional claim. The Fourth Amendment claim, along with the facts necessary to adjudicate it, and the collateral bar rule were raised in post-trial motions before the trial

court and before the Court of Appeals. (Mot. for Stay and Appeal Bond 9-15; Mot. to Correct Sentence 4-5; Mot. for New Trial 2-3, 6-7, 14-24; Mot. H'rg Tr. 4:14-12:2, 19:22-25, 21:1-6, Mar. 22, 2012; Am. Br. on Appeal 13-34). The facts underlying the lack of meaningful opportunity for appellate review, namely Ms. Dorsey's lack of counsel when the underlying order was entered, were raised in the trial court and before the Court of Appeals in subject matter jurisdiction, Fourth Amendment, and sufficiency of the evidence arguments. (Br. on Mot. to Correct Sentence 4-6; Mot. for Stay and Appeal Bond 4-5, 9-14; Am. Br. on Appeal 4-10, 43-46). The facts underlying the irretrievable surrender of constitutional rights exception were raised in the arguments on the Fourth Amendment. (Motion for Stay and Appeal Bond 9-15; Mot. to Correct Sentence 4-5; Br. on Mot. to Correct Sentence 4-6; Mot. for New Trial 2-3, 6-7, 14-24; Am. Br. on Appeal 4-8, 13-34). Both the irretrievable surrender of constitutional rights exception and the lack of meaningful opportunity for appellate review exceptions to the collateral bar rule are pure questions of law and would merely open the door to reversal, removing the collateral bar rule obstacle, based on the Fourth Amendment claim, which was analyzed and decided on its merits by the trial court and the Court of Appeals.

Furthermore, arguments may be improved on appeal without being barred by the preservation doctrine. See *People v Hall*, 290 Mich 15, 19; 287 NW 361 (1939) (quoting *Fitch v Manitou Cty Bd of Auditors*, 133 Mich 178; 94 NW 952 (1903)). In *Hall* this Court wrote:

> In support of this objection [unconstitutionality of an act] certain reasons were advanced, certain arguments urged. It would be a monstrous proposition to say that other reasons may not be advanced in this court, and stronger arguments, if discovered, urged, against the action proposed to be taken. We not think that this court should decline to hear and be

> influenced by these arguments, though it may be that if they had been brought to the attention of the trial judge his decision would have been different. It is generally true that the arguments in a case in this court, being made after counsel has had an opportunity to more thoroughly understand his case and examine authorities, are different and better than they were in the court below.

290 Mich at 19 (quoting *Fitch*, 133 Mich at 178). In this case, asserting that additional exceptions to the collateral bar rule apply, beyond lack of subject matter-jurisdiction, for the lack of meaningful opportunity for appellate review and the irretrievable surrender of constitutional rights in order to permit appellate review of the Fourth Amendment claim in the appeal from the contempt order is merely an improvement on the argument that was presented to the Court of Appeals and the trial court. See *Hall*, 290 Mich 15, 18-19.

B. THE EXCEPTIONS TO THE COLLATERAL BAR RULE ARE ISSUES OF LAW AND THE FACTS NECESSARY TO RESOLVE THEM WERE PRESENTED TO THE LOWER COURTS.

Even if the Court finds that these two issues were not preserved, the preservation requirement is not absolute and the Court, "may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Smith v Foerster-Bolser Constr Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006) (citing *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002). The issues on additional exceptions to the collateral bar rule are pure questions of law, and the facts necessary to resolve these questions of law were presented to the trial court and the Court of Appeals in the argumentation on the subject matter jurisdiction, the Fourth Amendment, and sufficiency

of the evidence claims. See *Foerster-Bolser Constr*, 269 Mich App at 423. Thus, the Court should address these issues in this appeal. See *id.*

C. THE ISSUE OF PRESERVATION WAS WAIVED BY THE STATE.

This Court has held that the rule requiring preservation of an issue at the trial court level and in the Court of Appeals can be waived by the State when the State does not timely raise and argue the issue of preservation before the lower courts. *People v Crawl*, 401 Mich 1, 30-32; 257 NW2d 86 (1977). This Court wrote:

> It would be disproportionate to regard the failure to raise this issue in the Court of Appeals as a waiver, and not to treat as a waiver of that failure the prosecutor's failure to call our attention to it. The rule requiring preservation of appellate issues first to the Court of Appeals is of no greater dignity than the constitutional prohibition of unreasonable searches and seizures. If an accused person's right to protection against impermissible searches and seizures can be waived by the carelessness or ineptitude of counsel, then, by like principle, the rule requiring that appellate issues be presented first to the Court of Appeals can be waived by the prosecutor's failure to timely call our attention to noncompliance with this rule.

Crawl, 401 Mich at 32.

Here, Ms. Dorsey included these two issues in her Application for Leave to Appeal filed on October 21, 2014, and also argued they were preserved. The State did not address preservation or argue that the issues were not preserved[3] in its answer to the Application

[3] While the State discussed waiver in its answer to the Application for Leave to Appeal writing, "(b) no opportunity for meaningful review of the court's order; however, the order was in place for a year before appellant contested its origin." (State's Answer to ALA 2) (emphasis omitted). This is an argument asserting that the collateral bar rule applies, and it is not an argument about the preservation of issues raised on appeal as exceptions to the collateral bar rule. (State's Answer to the ALA 2).

for Leave to Appeal filed on November 17, 2014. In fact, the State's answer conceded that "Appellant has filed a timely application for leave to appeal, raising the same issues in this Court that she raised in the Court of Appeals . . . ." (State's Answer to ALA 2). The State then went on to oppose the Application for Leave to Appeal on the merits of the issues and the collateral bar rule. (State's Answer to ALA 2). The State did not challenge the preservation of any of the issues raised in the Application for Leave to Appeal in its first supplemental brief filed on November 10, 2015. (State's First Supp. Br. 1-19).

D. ALTERNATIVELY, THE PLAIN ERROR RULE IS APPLICABLE.

Alternatively, even if the lack of meaningful opportunity for appellate review and irretrievable surrender of constitutional rights issues were not preserved for appeal, these arguments should still be reviewed under the plain error rule. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Plain error avoids forfeiture of an issue for lack of preservation when: (1) error has occurred; (2) the error was plain; (3) and the plain error affected substantial rights. See *Carines*, 460 Mich at 763 (citing *United States v Olano*, 507 US 725; 113 S Ct 1770; 123 L Ed 2d 508 (1993)). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." See *id*. at 763-64. This rule extends to claims of unpreserved constitutional error. See *id*. at 764. Of course, here the constitutional error under the Fourth Amendment was raised in the lower courts.

As to the first prong of the plain error analysis, error occurred in this case because in *Maness* the United States Supreme Court explicitly applied the right of pre-compliance

review to state civil cases as an exception to the collateral bar rule in cases where there was a lack of meaningful opportunity for appellate review and where the underlying order required an irretrievable surrender of constitutional rights. 419 US at 460-66. *Maness* is binding on this Court. *Id*. Although there is not much authority on these exceptions to the collateral bar rule in *Maness*, it is also true that *Maness* was decided in 1975. Thus, the error is also plain as *Maness* clearly permits an exception to the collateral bar rule regardless of whether the trial court had subject matter jurisdiction. See *id*. Furthermore, the error affected Ms. Dorsey's substantial rights because the Court of Appeals found that the underlying drug testing order in this case was unconstitutional. *In re Contempt of Dorsey*, 306 Mich App at 589. Thus, under these exceptions to the collateral bar rule, the finding by the Court of Appeals that the underlying drug testing order violated the Fourth Amendment would have resulted in the reversal of the contempt convictions. See *Maness*, 419 US at 460-66. In this case, the plain error would have been decisive in the outcome meaning that prejudice exists, and thus, the doctrine should be applied to save these issues if this Court finds that the additional exceptions to the collateral bar rule were not preserved as issues for appeal. See *People v Vaughn*, 491 Mich 642, 665-66; 821 NW2d 288 (2012) (quoting *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994)).

CONCLUSION

In conclusion, three exceptions to the collateral bar rule apply in this case. First, the family court lacked subject matter jurisdiction to issue the underlying January 14, 2011 drug testing order because the two statutes granting the family jurisdiction over adults are ambiguous in their interaction with each other and cannot be construed in ways that permit the family court to issue unreasonable orders that violate the constitutional

guarantee against unreasonable searches and seizures. See *Sanders*, 495 Mich at 412-13 (citing *Taylor*, 468 Mich at 6); *Moreno v. State*, 203 P3d 1000, 1008 (Utah, 2009); *Macomber*, 436 Mich at 391, 398-99. Additionally, no further penalty can be imposed on Ms. Dorsey, regardless of whether the family court had subject matter jurisdiction, because the underlying order was erroneous. See *Rose*, 345 Mich at 615.

Second, binding authority from the United States Supreme Court and other courts requires Michigan to adopt the lack of meaningful opportunity for appellate review and irretrievable surrender of constitutional rights exceptions to the collateral bar rule. See *Maness*, 419 US at 460; *Ryan*, 402 US at 532-33; *Walker*, 388 US at 318-19; *In re Novak*, 932 F2d at 1401-02; *Dickinson*, 465 F2d at 511; *Dauphine*, 843 So 2d at 1107 (citing *City of Lake Charles*, 347 So 2d at 494); *Crenshaw*, 307 Or at 168. These two exceptions apply to the facts of this case permitting Ms. Dorsey to collaterally challenge the underlying drug testing order in her appeal from her contempt convictions as Ms. Dorsey was required to irretrievably surrender her Fourth Amendment right to be free from unreasonable searches and seizures. Ms. Dorsey lacked a meaningful opportunity for appellate review because (1) she was indigent, (2) she lacked the resources to obtain counsel and prepare the transcript and (3) she could, at most, have sought leave to appeal as an appeal by right would not have been permitted by the court rules. As the Court of Appeals has already found the underlying drug testing order unconstitutional, see *In re Contempt of Dorsey*, 306 Mich App at 589, and the collateral bar rule is not applicable, Ms. Dorsey is entitled to have the contempt orders issued against her vacated.

Third, the exceptions to the collateral bar rule regarding the lack of meaningful opportunity for appellate review and the irretrievable surrender of constitutional rights

were preserved for appeal in that they merely represent an improvement on the arguments advanced below on the exceptions to the collateral bar rule and are issues of pure law. See *Hall*, 290 Mich at 19 (quoting *Fitch*, 133 Mich at 178). Additionally, the facts necessary to resolve these pure questions of law were presented to the trial court and the Court of Appeals in the argumentation on subject matter jurisdiction, the Fourth Amendment, and sufficiency of the evidence claims. See *Foerster-Bolser Constr*, 269 Mich App at 423. Furthermore, the State waived its ability to assert the lack of preservation of issues for appeal as it did not address the issue in its answer to the Application for Leave to Appeal or in its First Supplemental Brief. See *Crawl*, 401 Mich at 32. Alternatively, if the Court finds that these additional exceptions to the collateral bar rule were not preserved for appeal, these the failure to apply these exceptions constitutes plain error and should still be reviewed by the Court. See *Maness*, 419 US at 460-66; *Carines*, 460 Mich at 763 (citing *Olano*, 507 US at 725).

RELIEF REQUESTED

Ms. Dorsey requests that this Court grant leave to appeal to address the issues in the application and that this Court ultimately reverse the opinion of the Court of Appeals in this case. Ms. Dorsey also requests the entry of a judgment of acquittal on the two show cause orders issued in this case. Alternatively, Ms. Dorsey requests a new trial and any other just relief.

Respectfully submitted,

July 13, 2016

/s/ Kurt T. Koehler

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STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE CONTEMPT OF KELLY MICHELLE DORSEY,

PEOPLE OF THE STATE OF MICHIGAN
Petitioner-Appellee,

v

TYLER MICHAEL DORSEY,
Respondent,

and

KELLY MICHELLE DORSEY,
Appellant
/

Supreme Court: 150298
Court of Appeals: 309269
44th Cir. Ct. Livingston County
Family Division 08-12596-DL

PROOF OF SERVICE

In compliance with MCR 7.305(A)(3), I hereby certify that I served Appellant's Second Supplemental Brief, and this proof of service, through the e-service functionality provided by truefiling.com, on William Worden, the attorney for the appellee, and Dennis Brewer, the attorney for Tyler Dorsey.

Respectfully Submitted,

July 13, 2016

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